

Appl. No. 09/387,195
Amdt. dated May 29, 2008
Reply to Office Action of April 15, 2008

REMARKS

Claims 2-4 and 6 are now presented. Claims 1, 5, 7, 11, 13, 17, 19-30 and 33 were canceled previously. Claims 8-10, 12, 14-16, 18, 31 and 32 are presently canceled without prejudice for later presentation in a continuation application.

A. Claims 8-10, 12, 14-16, 18, 31 and 32

In the Office Action of April 15, 2008, claims 8-10, 12, 14-16, 18, 31 and 32 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, it was asserted that independent claims 10, 16 and 32 were directed to a computer program that is neither a physical thing nor a process. Applicants traverse the rejection in that the claims are directed to statutory subject matter under the broad language of 35 U.S.C. § 101. While the Examiner has relied on the USPTO Interim Guidelines for Patent Subject Matter Eligibility for supporting her position, the guidelines rely on various tests for showing statutory subject matter, such as the useful, concrete and tangible result test, which have no basis in the statute itself. Since the Examiner's rejection is based on improper standards and the claims are drawn to statutory subject matter, the rejection is improper and should be withdrawn.

Despite the impropriety of the rejection, claims 8-10, 12, 14-16, 18, 31 and 32 have been canceled and so the rejection has been rendered moot. The claims are being canceled in order to expedite the granting of a patent for the allowed claims 2-4 and 6 and in anticipation of receiving guidance in the near future from the Court of Appeals for the Federal Circuit on the scope of inventions permitted under 35 U.S.C. § 101. Accordingly, the claims are being canceled for reasons not related to patentability as defined in *Festo Corporation v. Shoketsu Kinzoku Kogyo*

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Kabushiki Co., Ltd, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

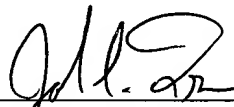
B. Claims 2-4 and 6

Applicant notes with appreciation that claims 2-4 and 6 have been allowed.

CONCLUSION

In view of the arguments above, Applicant respectfully submits that all of the pending claims 2-4 and 6 are in condition for allowance and seeks an early formal allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, she is respectfully requested to contact the undersigned attorney at (312) 321-4200.

Respectfully submitted,



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